

From: Scott Currie
To: Microsoft ATR
Date: 1/27/02 11:55pm
Subject: Microsoft Settlement

I am a programmer by profession; I have never had any legal training or experience. As such, it makes understanding a settlement such as the Microsoft Proposed Final Judgment difficult for me. However, as the results of this landmark case will impact my chosen profession for years to come, I have felt compelled to do what I can to understand this judgment. While I do not grasp the entire scope of the document, I have seen what I view as some problems with the wording therein. These flaws very well may allow Microsoft to avoid the intended punishment, and continue its monopolistic behavior.

One of the few real competitors to Microsoft's products are the loosely organized people who contribute to various open source projects, such as Linux, Apache, and Samba. This judgment does very little to protect these projects. For example, the Samba project develops networking products that interoperate seamlessly with Microsoft products. By using the Samba product, one can create a network server that runs any variety of operating systems, and yet fully functions with Microsoft products as well. This type of interoperability is very important to open competition, as the server administrator can choose the superior products even if they are from different vendors, and expect the network to work well together.

I believe that the clause in the judgment requiring Microsoft to publish their Application Programming Interfaces (APIs) is probably the single best way to ensure competition. If the ground rules for how programs communicate are public knowledge, then there will be true competition, and the best product will be the one chosen by the users. I believe there are gaping holes in the wording of this clause. I understand the intent behind the security exceptions to disclosure in Section III.J. However, in this networked era in technology, nearly any transactions carried out by computers are potentially security risks. I am concerned that with Microsoft's reluctance to give up their monopoly, they may claim that releasing key components of, for instance, authentication schemes would compromise the security of their products. However, the piece that was withheld was also a key component that a competing project such as Samba would need to be able to interoperate seamlessly.

Another concern is that the publication of these schemes will be under a commercial model. The above open source projects are distributed freely across the Internet, and do not have a per-user charge. Yet the Proposed Final Judgment would allow Microsoft to charge money for access to their APIs. When a project such as Samba is mainly programmed as a hobby, and given away with no concern for profit, the commercial

licensing of these APIs will preclude the open source project from benefiting from the settlement.

A final concern I have is that the enforcement committee does not have legal authority to impose punishments should Microsoft choose to violate the terms of this agreement. A

According to Section IV.D.4.d, "No work product, findings, or recommendation by the TC may be admitted in any enforcement proceeding before the Court for any purpose, and no member of the TC shall testify by deposition, in court or before any other tribunal regarding any matter related to this Final Judgment."

It makes no sense to disallow the findings of an oversight committee in a legal complaint. I believe when a company has proven itself to be opposed to voluntary steps to avoid monopolistic behavior, there should be a mechanism for the oversight committee to enforce violations of the PFJ.

In light of these concerns with the settlements reached, I do not believe that the Proposed Final Judgment will accomplish the re-establishment of competition in the technology sector. I call upon you to reject this settlement, or at least address these concerns that will enable Microsoft to continue to engage in monopolistic behavior, despite this Final Judgment.

Thank you for the opportunity to comment.

Sincerely,
Scott Currie, Programmer Analyst

PS I have also faxed these comments to the appropriate number.

Outgoing mail is certified Virus Free.

Checked by AVG anti-virus system (<http://www.grisoft.com>).

Version: 6.0.317 / Virus Database: 176 - Release Date: 1/21/2002